IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4548 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VIMALABEN DAHYABHAI DAYALBHAI PATEL WD/O. DAHYABHAI D PATEL - Petitioner

Versus

BHAVNAGAR MUNICIPAL CORPORATION THRO.COMMISSIONER - Respondent

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Appearance :
MR BM MANGUKIYA for Petitioners.
MR RM CHHAYA for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/11/2006
ORAL JUDGMENT

1. Legal heirs of deceased Dahyabhai Dayalbhai Patel has filed this petition under Article 227 of the Constitution of India challenging the order passed by the learned Joint District Judge, Fast Track Court No. 2, Bhavnagar on 10.12.2004 in Regular Civil Appeal No. 175 of 1995 whereby he has fixed the assessment of the petitioner's property at Rs. 4,500/- per month and the deceased Dahyabhai Dayalbhai Patel was ordered to pay the Municipal tax on the basis of the said assessment to the respondent Corporation.

2. Heard Mr. B.M. Mangukiya, learned advocate appearing for the petitioner and Mr. R.M. Chhaya, learned advocate appearing for the respondent Corporation.

3. It is the case of the petitioners that the deceased husband of the petitioner No. 1 purchased the land admeasuring 334.05 Sq. Mtrs. being Plot No. 445 situated on Vijayrajnagar, Bhavnagar for Rs. 6,400/- and the letter of allotment was also issued by the Society on 27.01.1991. The said premises has been given Municipal Cess No. 4598. The residential premises of the petitioner was assessed for taxation at Rs.6,400/- per month. Being aggrieved by the said assessment, the petitioner preferred an appeal before the Appellate Committee which was dismissed and assessment fixed was retained by an order dated 06.11.1993. Pursuant to the said assessment, a bill was issued and the copy of the decision was served on the petitioner on 07.11.1993. The petitioner has challenged the said order in appeal being Municipal Appeal No. 195 of 1993. The said appeal was allowed on 20.10.1995 and the assessment order was set aside and it was ordered that the assessment be made at the rate of Rs.1,500/- per month on and from the special notice dated 04.03.1993.

4. Being aggrieved by the said order, the respondent Corporation has preferred an appeal before the District Judge, Bhavnagar on 12.12.1995. During the pendency of the said appeal, the husband of the petitioner No. 1 and father of the petitioner Nos. 2 & 3 expired on 27.04.2003 in a motor accident. The declaration was made by the learned advocate appearing for deceased Dahyabhai Dayalbhai Patel before the District Judge by way of an application Exh. 19 on 12.07.2004. Pursuant to the said declaration, the respondent Corporation has filed an application at Exh. 20 on 04.09.2004 seeking permission to bring legal heirs of the deceased Dahyabhai on record. The District Court has issued notice on 04.10.2004 making it returnable on 29.10.2004. Since the name of the deceased husband of the petitioner No. 1 was wrongly spelt while filing the appeal, i.e., instead of Dahyabhai Dayalbhai Patel, it was stated Dayalbhai Dahyabhai Patel, an application was submitted at Exh. 8 on 08.01.1996

for correction in the name in the cause title of the memo of the appeal. From the copies supplied to the petitioners, it appears that no order has been recorded but the title clause of the appeal memo shows that some order was passed on 12.01.1996 permitting the corrections. While passing the impugned order, it appears that the said correction was not done. The appeal being Appeal No. 175 of 1995 was disposed of on 10.12.2004 which is under challenge in this petition.

5. Mr. B.M. Mangukiya, learned advocate appearing for the petitioner has submitted that apart from the merits of the matter, the order passed by the learned Joint District Judge is not sustainable in the eye of law as it is passed on the deceased person. He has further submitted that since the learned Joint District Judge has passed an order against the dead person, it is a nullity and the said null and void order cannot either be varied or confirmed. He has, therefore, submitted that the order is required to be

quashed and set aside.

6. Mr. R.M. Chhaya, learned advocate appearing for the respondent Corporation has submitted that the petitioners have not paid the amount even as per the assessment retained by the learned Civil Judge (S.D.), Bhavnagar vide his order dated 20.10.1995. Even this Court has passed an order on 18.03.2005 at the time of issuance of notice and directed the petitioner to pay tax on the basis of assessment made at the rate of Rs.1,500/- per month. He has, therefore, submitted that if the assessment of the property refixed by the learned Joint District Judge at Rs.4,500/- and if the said order is challenged in this petition, in that case, at least the petitioners should have paid Municipal tax on the basis of assessment of Rs. 1,500/- and then only the legal submissions made by the petitioners can be considered by this Court.

7. After having heard learned advocates appearing for

the parties and after having gone through the impugned orders passed by the authorities below and the submissions made in this behalf, the Court is of the view that since the order is passed against the dead person, the same cannot be sustained. The Court, therefore, without going into the merits of the matter quashes and set aside the impugned order passed by the learned Joint District Judge, Fast Track Court No. 2, Bhavnagar on 10.12.2004 in Regular Civil Appeal No. 175 of 1995 with a direction to the learned Joint District Judge, Bhavnagar to implead the legal heirs of the deceased in the said appeal and decide the said appeal afresh after giving an opportunity of hearing to the legal heirs of the deceased Dahyabhai. It is, however, made clear that as decided by the learned Civil Judge (S.D.), Bhavnagar in Municipal Tax Appeal No. 195 of 1993 vide his order dated 20.10.1995 and as directed by this Court on 18.03.2005, legal heirs of the deceased Dahyabhai Dayalbhai Patel are directed to pay the municipal tax on the basis of the assessment made at the rate of Rs.1,500/- per month

to the respondent Corporation. The entire amount of arrears shall be paid by the petitioners within four months from the date of receipt of the writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier. It is made clear that the appeal would be heard by the learned Joint District Judge, Fast Track Court, Bhavnagar only after payment of the aforesaid amount by the petitioners. Since the Court has not decided the assessment of property nor expressed any opinion on merits, it is open for the parties to make their submissions before the learned Joint District Judge who will pass an appropriate order after considering the submissions so made before him.

8. With this direction, the petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

[**K.A. PUJ, J.**]

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